CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 41

STANDARD ACCIDENT INSURANCE COMPANY,
PETITIONER,

vs.

THE UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF L. R. POWELL, JR., AND HENRY W. ANDERSON, AS RECEIVERS, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 7, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

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vs.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 18, 1937.

[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Proceedings in the United States District Court in and for the Southern District of Florida in a Certain Cause Therein, Wherein United States of America, for the use and Benefit of L. R. Powell, Jr. and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, a Corporation, is Plaintiff, and Standard Accident Insurance Company, a Corporation Organized and Existing under the Laws of the State of Michigan, of Detroit, Michigan, is Defendant. Case No. 3420-T. Civil.

[fol. 2] DECLARATION—Filed February 14, 1936

Come now L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, a corporation organized and existing under the laws of the State of Virginia and other states, and bring this suit under and in accordance with the Act of August 13, 1894—28 Statute of the United States, 278; 40 U. S. C. A., Sec. 270, and amendments thereto, giving the Court jurisdiction, and allege as follows:

I.

That L. R. Powell, Jr. and Henry W. Anderson are Receivers of the Seaboard Air Line Railway Company, a corporation, pursuant to appointment of the United States District Court of the Eastern District of Virginia and the United States District Court for the Southern District of Florida in Ancillary proceedings, and as such have charge of the accounts of said Seaboard Air Line Railway Company.

II

That on the 25th day of January, 1933, Joseph A. Tintari entered into a certain written contract with the United States of America for the construction, including approaches, of the post office at Sarasota, Florida, for the consideration of $136,000; that is and by said contract the said Joseph A. Tintari was to furnish all material and labor in the construction of said post office.

[fol. 3] III

That to secure the performance of said contract the said Joseph A. Tintari, as principal, and the Standard Accident Insurance Company, a corporation organized and existing under the laws of the state of Michigan, of Detroit, Michigan, as surety, did on the 30th day of January, 1933, enter into a certain bond or writing obligatory under seal with the said United States of America, in the penal sum of $70,000 as will more fully appear from copy of said bond or writing obligatory attached hereto, marked Exhibit "A", and by express reference made a part of this declaration; that said copy of said bond was furnished by the Assistant Comptroller General of the United States to the plaintiff as provided by law. That in and by said bond the said Standard Accident Insurance Company became obligated and bound to promptly pay to all persons supplying the said Joseph A. Tintari with labor and material in the prosecution of the work provided by the above mentioned contract between Joseph A. Tintari, all in accordance with the obligations imposed on the said Joseph A. Tintari and the Standard Accident Insurance Company by the statutes of the United States of America.

IV

That L. R. Powell, Jr. and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company furnished certain labor and services to the said Joseph A. Tintari in the prosecution of the work and furnishing of material provided for in and by the said contract between the said Joseph A. Tintari and the United States of America. That the said labor and services so furnished by the use-plaintiff were supplied to Joseph A. Tintari at Sarasota, Florida, on divers dates, to-wit: September 26, 1933, Octo-
[fol. 4] ber 19, 1933, October 21, 1933, November 7, 1933, and November 10, 1933, as is more fully set forth in freight bills attached hereto, marked Exhibit "B", and by reference made a part hereof, to-wit:

No. 4091 for	$68.04
No. 4092 for	70.53
No. 4095 for	62.70
No. 4522 for	251.72
No. 4563 for	62.97

No. 4564 for	62.26
No. 5242 for	62.15
No. 5243 for	60.28
No. 5244 for	62.37
No. 5334 for	87.40
Making a total of	$850.42

That no part of said debt has been paid except $442.28, leaving a balance of $408.14, and that there are no setoffs or counter claims to the last mentioned amounts. That the said labor and services so furnished were used by the said Joseph A. Tintari in the prosecution and the performance of the work provided in the aforementioned contract between the said Joseph A. Tintari and the United States of America.

V

Plaintiff further alleges that no suit was brought by the United States of America within six months from the completion and final settlement of said contract, final settlement having been made June 25, 1933, less than one year before bringing this suit.

VI

Plaintiff herein further avers that all time elapsed and all things were done and performed to entitle use-plaintiff [fol. 5] herein to payment unto it by said Joseph A. Tintari and this defendant Standard Accident Insurance Company, of use-plaintiff's said claim, yet the defendant herein, Standard Accident Insurance Company and said Joseph A. Tintari have and continue to fail and omit to pay said amount of $408.14 unto use-plaintiff herein all to the damage of use-plaintiff herein in the sum of $408.14, together with interest from November 10, 1933.

Wherefore, Plaintiff United States of America, for the use and benefit of L. R. Powell, Jr. and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, a corporation, brings this action and claims damages in the sum of Seven Hundred Fifty Dollars ($750.00).

Knight, Thompson & Turner, Attorneys for Plaintiff.

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EXHIBIT "A" TO DECLARATION

Standard Form No. 25

Approved by the President Nov. 10, 1926

Standard Government Form of Performance Bond

(Construction or Supply)

Know All Men by These Presents, That we, Joseph A. Tintari, of Chicago Heights, Illinois, (See Instructions 4, 5, and 7) as Principal, and Standard Accident Insurance Company, a corporation organized and existing under the laws of the State of Michigan, of Detroit, Michigan, (See Instructions 2, 3, 4, and 7), as Surety, are held and firmly bound unto the United States of America, hereinafter called [fol. 6] the Government, in the penal sum of Seventy Thousand Dollars lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The Condition of This Obligation is Such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated January 25th, 1933, for the construction, including approaches, of the Post Office at Sarasota, Florida, per Bid No. 2 (using a limestone having the characteristics of "Florida Travertine" for all exterior facing where stone is indicated on the drawings):

Now therefore, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, and if said contract is for the construction or repair of a public building or a public work within the meaning of the act of August 13, 1894, as amended by act of February 25, 1905, shall promptly make payment to all persons supplying the principal with labor and materials in the prosecution of the work provided for in said contract, and any such authorized extension or modification thereof, then, this obligation to be void; otherwise to remain in full force and virtue.

In Witness Whereof, the above-bounden parties have executed this instrument under their several seals this 30th [fol. 7] day of January, 1933, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

[Seal]

JOSEPH A. TINTARI,
(Individual principal)
1502 Scott Ave., Chicago Hgts., Ill.
(Business address)

In presence of—
CELIO RUGGERI,
1144 West End Ave.,
Chgo. Hghts., Ill.
(Address)

..... [Seal]
(Individual principal)
.....
(Business address)

.....
.....
(Address)

..... [Seal]
(Individual surety)
.....
(Business address)

.....
.....
(Address)

..... [Seal]
(Individual surety)
.....
(Business address)

.....
.....
(Address)

[fol. 8]

.....
(Corporate principal
.....
(Business address)
By .....
[Affix corporate Seal]
.....

Attest:

.....

STANDARD ACCIDENT INSURANCE COMPANY,
(Corporate surety)
640 Temple Ave.,
Detroit, Mich.
(Business Address)
[Affix corporate Seal]
By M. J. SCHEEMEACKER,
Agent and Attorney
in Fact.

Witness:
A. H. ANDERSON.

The rate of premium on this bond is $15.00 per thousand.

Total amount of premium charged, $2,040.00.

(The above must be filled in by corporate surety.)

Certificate as to Corporate Principal

I, ..., certify that I am the ..... secretary of the corporation named as principal in the within bond; that ..... who signed the said bond on behalf of the principal was then ..... of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for [fol. 9] and in behalf of said corporation by authority of its governing body.

.....
[Corporate Seal.]

Affidavit by Individual Surety

STATE OF .....,
County of ....., ss:

I, ..., being duly sworn, depose and say that I am one of the sureties to the foregoing bond; that I am a citizen of the United States, and of full age and legally competent; that I reside at .....

and that I am worth in real estate and personal property the sum of ..... dollars, over and above (1) all my debts and liabilities, owing and incurred, (2) any property exempt from execution, (3) and aggregate full penalties on all other bonds on which I am surety, and (4) any pecunary interest I have in the business of the principal on said bond; that I own, unincumbered, real estate, the fee of which is in my name, worth ..... dollars, located in ..... ; that said property is not exempt from seizure and sale under any homestead law, community, or marriage law, or upon any attachment, execution, or judicial process, and that I am not surety on any other bonds, except as follows:

.....

(State character and amount of each bond. If not on other bonds, so state.)

.....

.....

.....

(Surety's signature)

Subscribed and sworn to before me this ..... day of ....., 19..., at .....

.....

.....

[Official Seal] (Title of official administering oath)

[fol. 10] Affidavit by Individual Surety

STATE OF .....
County of ....., ss:

I, ..., being duly sworn, depose and say that I am one of the sureties to the foregoing bond; that I am a citizen of the United States, and of full age and legally competent; that I reside at ..... and that I am worth in real estate and personal property the sum of ..... dollars, over and above (1) all my debts and liabilities, owing and incurred, (2) any property exempt from execution, (3) the aggregate full penalties on all other bonds on which I am surety, and (4) any pecuniary interest I have in the busi-

ness of the principal on said bond; that I own, unincumbered, real estate, the fee of which is in my name, worth .....dollars, located in .....; that said property is not exempt from seizure and sale under any homestead law, community, or marriage law, or upon any attachment, execution, or judicial process, and that I am not surety on any other bonds, except as follows:

.....

(State character and amount of each bond. If not on other bonds, so state.)

.....

.....

.....

(Surety's signature)

Subscribed and sworn to before me this .....day of ....., 19..., at .....

.....

[Official Seal] (Title of official administering oath)

[fol. 11] Certificate of Sufficiency

I, ..., do hereby certify that ..... one of the sureties named above, is personally known to me, and that, to the best of my knowledge and belief, the facts stated by such surety in the foregoing affidavit are true.

.....

.....

(Address)

Certificate of Sufficiency

I, ..., do hereby certify that ..... one of the sureties named above, is personally known to me, and that, to the best of my knowledge and belief, the facts stated by such surety in the foregoing affidavit are true.

.....

.....

(Address)

Instructions

1. This form shall be used for construction work or the furnishing of supplies, whenever a bond is required.

2. The surety on the bond for any bid or for the performance of the contract may be any corporation authorized by the Secretary of the Treasury to act as surety, or two responsible individual sureties. Individual sureties shall justify in sums aggregating not less than double the penalty of the bond.

[fol. 12] 3. A firm, as such, will not be accepted as a surety, nor a partner for copartners or for a firm of which he is a member. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their stock holdings therein. Sureties, if individuals, shall be citizens of the United States; except that sureties on bonds executed in any foreign country, the Canal Zone, the Philippine Islands, Porto Rico, Hawaii, Alaska, or any possession of the United States, for the performance of contracts entered into in these places, need not be citizens of the United States, but if not citizens of the United States shall be domiciled in the place where the contract is to be performed.

4. The name, including full Christian name, and residence of each individual party to the bond shall be inserted in the body thereof, and each such party shall sign the bond with his usual signature on the line opposite the scroll seal, and if signed in Maine, Massachusetts, or New Hampshire, an adhesive seal shall be fixed opposite the signature.

5. If the principals are partners, their individual names shall appear in the body of the bond, with the recital that they are partners composing a firm, naming it, and all the members of the firm shall execute the bond as individuals.

6. The signature of a witness shall appear in the appropriate place, attesting the signature of each individual party to the bond.

7. If the principal or surety is a corporation, the name of the State in which incorporated shall be inserted in the appropriate place in the body of the bond, and said instru-

[fol. 13] ment shall be executed and attested under the corporate seal as indicated in the form. If the corporation has no corporate seal the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name.

8. The official character and authority of the person or persons executing the bond for the principal, if a corporation, shall be certified by the secretary or assistant secretary, according to the form attached thereto. In lieu of such certificate there may be attached to the bond copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

9. Each individual surety shall justify, under oath, according to the form appearing on the bond, before a United States commissioner, a clerk of a United States Court, a notary public, or some other officer having authority to administer oaths generally. If the officer has an official seal it shall be affixed, otherwise the proper certificate as to his official character shall be furnished. Where citizenship is not required, as provided in paragraph 3 of these Instructions, the affidavit may be amended accordingly.

10. The certificate of sufficiency shall be signed by a Judge or Clerk of a Court of record, a United States district attorney or commissioner, or the president or cashier of a bank or trust company.

11. The date of the bond must not be prior to the date of the instrument for which it is given.

[fol. 14] Form 8651

Treasury Department

Office of the Supervising Architect

Contract of Joseph A. Tintari, 1502 Scott Avenue

Of Chicago Heights, Illinois.

For Construction.
For U. S. Post Office.
At Sarasota, Florida.
Dated January 25, 1933. I sent 1-25—in site OK.
Amount, $136,000.00.

Copy assignment: CG O CEXX Con Sur Archts.
√ Entered.
√ Drawings sent.

√ Charged Surety Section.
√ Charged Solicitor.
√ Drawings signed.

2-14-33—PEM.

Telegrams sent.
Divisions notified.

Duplicated.
Acknowledgments.
Envelopes.
Charged out.
Solvency record.

Return to Supervising Architect.

Treasury Department

Office of the Supervising Architect

Feb. 2, 1933.

Respectfully referred to the Solicitor of the Treasury, through the office of Commissioner of Accounts and [fol. 15] Deposits, Section of Surety Bonds, for examination and indorsement.

H. G. Sherwood, Executive Officer.

CWH.

Department of Justice

Office of the Solicitor of the Treasury

Feb. 8, 1933.

I have examined the within instruments as to form and execution, and in these respects they are approved.

T. Sack, Assistant Solicitor of the Treasury.

FM.

Received, Office Supervising Architect, Treasury Dept., Feb. 1, 1933. Noted..... Ans'd..... 19....

Treasury Department

Office of the Secretary

Commissioner of Accounts and Deposits

Section of Surety Bonds

Feb. 3, 1933

Examined and approved as to the within corporate surety.

Respectfully referred to the Solicitor of the Treasury for examination as to form and legal sufficiency.

D. W. Bell, Commissioner of Accounts and Deposits.

efi.

Solicitor of the Treasury, Received Feb. 3, 1933.

EXHIBIT "B" TO DECLARATION

(Copies of Freight Bills)

Received from
L. R. Powell, Jr. and E. W. Smith, Receivers
Seaboard Air Line Railway
In Good Condition the Articles Described Below

712—SEABOARD AIR LINE RAILWAY—712

L. R. Powell, Jr., and E. W. Smith, Receivers

Form 2297

DELIVERY RECEIPT

STOP THIS CAR AT | FOR | Weight in Tons: Gross | Net

Freight Bill No. 4091
Freight Bill Date 9/26/33

CAR INITIALS AND NUMBER | C. L. Transferred to or L. C. L. Loading No. | DATE | WAYBILL No.

SAL 99679 | 9/22/33 | L 3544

TO STATION STATE | FROM STATION STATE

Sarasota, Fla. | Conrock Brooksville, Fla.

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill—Indicate by Check Mark whether Shipper's Routing or Agent's Routing) | Shipper's Routing | Agent's Routing

SAL

CONSIGNEE, ADDRESS (Final Destination and Additional Routing)

Joseph A Tintari

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled.)

Florida Crushed Stone Co.

INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

Length of Car Ordered	Length of Car Furnished	Marked Capacity of Car Ordered	Marked Capacity of Car Furnished	Stenciled Weight of Car

WEIGHED
AT
GROSS
TARE
ALLOWANCE
NET

This Waybill shall be used for All Single Consignments, whether Carload or Less Carload or Interline

(1st) Transfer or Authority for Diversion | (2nd) Transfer or Authority for Diversion | (3rd) Transfer or Authority for Diversion | (4th) Transfer or Authority for Diversion

Indicate by symbol in column provided how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	Commodity No.	*	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
C/L Crushed Stone	117300		1.10 IR		64.52 3.52 68.04 Collect		

COPY

DEPOSITED IN MAIL BOX DATE	ARRIVAL NOTICE SENT BY U. S. MAIL ADDRESS	SIGNATURE DATE OF DELIVERY 193 TIME	CONSIGNEE

712—SEABOARD AIR LINE RAILWAY—712

16

13

Received from
L. R. Powell, Jr., and E. W. Smith, Receivers
Seaboard Air Line Railway
In Good Condition the Articles Described Below

712—SEABOARD AIR LINE RAILWAY—712

L. R. Powell, Jr., and E. W. Smith, Receivers

DELIVERY RECEIPT

Form 2377

STOP THIS CAR AT | FOR | Weight in Tons: Gross | Net

Freight Bill No. 4092
Freight Bill Date 9/25/33

CAR INITIALS AND NUMBER: SAL 99186

C. L. Transferred to or L.C.L. Loading No.

DATE: 9/22/33

WAYBILL No.: L 3348

TO STATION STATE: Sarasota, Fla.

FROM STATION STATE: Conrock
NO. ( ) Brooksville, Fla.

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing.): SAL

Shipper's Routing

Agent's Routing

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled.): Florida Crushed Stone Co.

CONSIGNEE, ADDRESS (Final Destination and Additional Routing): Joseph A Tintari

Length of Car Ordered	Length of Car Furnished	Marked Capacity of Car Ordered	Marked Capacity of Car Furnished	Stenciled Weight of Car

WEIGHED
AT
GROSS
TARE
ALLOWANCE
NET

INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

This Waybill shall be used for All Single Consignments, whether Carload or Less Carload or whether Local or Interline

(1st) Transfer or Authority for Diversion

(2nd) Transfer or Authority for Diversion

(3rd) Transfer or Authority for Diversion

(4th) Transfer or Authority for Diversion

Indicate by symbol in column provided ★ how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	Commodity No.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
C/L Crushed Stone			121600	110	66.88		
				IR	3.65		
					70.53		Collect

COPY

DEPOSITED IN MAIL BOX	ARRIVAL NOTICE SENT BY U. S. MAIL
DATE	ADDRESS
TIME	
BY WHOM	

SIGNATURE
DATE OF DELIVERY 193
TIME
CONSIGNEE

17

712—SEABOARD AIR LINE RAILWAY—712

17

Received from L. R. Powell, Jr. and E. W. Smith, Receivers Seaboard Air Line Railway In Good Condition the Articles Described Below

712—SEABOARD AIR LINE RAILWAY—712

L. R. Powell, Jr., and E. W. Smith, Receivers

Form 2377

DELIVERY RECEIPT

STOP THIS CAR AT | FOR | Weight in Tons: Gross | Net

Freight Bill No. 4095
Freight Bill Date 9/26/33

CAR INITIALS AND NUMBER: SAL 13126

C. L. Transferred to or L.C.L. Loading No.

DATE: 9/25/33

WAYBILL No.: 15404

TO | STATION | STATE: Sarasota, Florida

FROM | STATION | STATE: [redacted] Tampa, Fla.

NO. ( ) [redacted]

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing.): SAL

Shipper's Routing

Agent's Routing

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled.): Florida Portland Cement

CONSIGNEE, ADDRESS (Final Destination and Additional Routing): Joseph A Tintari

Length of Car Ordered	Length of Car Furnished	Marked Capacity of Car Ordered	Marked Capacity of Car Furnished	Stenciled Weight of Car

WEIGHED

AT

GROSS

TARE

ALLOWANCE

NET

INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

(1st) Transfer or Authority for Diversion

(2nd) Transfer or Authority for Diversion

(3rd) Transfer or Authority for Diversion

(4th) Transfer or Authority for Diversion

This Waybill shall be used for All Single Consignments, whether Carload or Less Carload or whether Local or Interline

Indicate by symbol in column provided how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	Commodity No.	*	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
528 Sx Cement			50160	115	57.68		
				IR	5.02		
					62.70	Collect	

COPY

DEPOSITED IN MAIL BOX	ARRIVAL NOTICE SENT BY U. S. MAIL
DATE	ADDRESS
TIME	
BY WHOM	

SIGNATURE

DATE OF DELIVERY 193

CONSIGNEE

TIME

18

712—SEABOARD AIR LINE RAILWAY—712

15

Received from
L. R. Powell, Jr., and E. W. Smith, Receivers
Seaboard Air Line Railway
In Good Condition the Articles Described Below

712—SEABOARD AIR LINE RAILWAY—712

L. R. Powell, Jr., and E. W. Smith, Receivers

Form 2977

DELIVERY RECEIPT

STOP THIS CAR AT — FOR

Weight in Tons: Gross — Net

Freight Bill No. 4582
Freight Bill Date 10/19/33

CAR INITIALS AND NUMBER — C. L. Transferred to or L.C.L. Loading No. — DATE — WAYBILL No.

TO LAN 25136 STATION — STATE

10/15/33 STATION 5297 STATE

Sarasota, Fla.

TSX
NO. ( ) Anniston, Ala.

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing.) — Shipper's Routing — Agent's Routing

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill or Previous Waybill Reference and Routing When Rebilled.)

Kilby Car & Fdy Co.

CONSIGNEE, ADDRESS (Final Destination and Additional Routing)

Josephine Tintari

Length of Car Ordered	Length of Car Furnished	Marked Capacity of Car Ordered	Marked Capacity of Car Furnished	Stenciled Weight of Car

INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

WEIGHED
AT
GROSS
TARE
ALLOWANCE
NET

This Waybill shall be used for All Single Consignments, whether Carload or Less Carload or Interline

(1st) Transfer or Authority for Diversion	(2nd) Transfer or Authority for Diversion	(3rd) Transfer or Authority for Diversion	(4th) Transfer or Authority for Diversion

Indicate by symbol in column provided how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	Commodity No.	*	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
1 Car Steel Bars SLAC			43400	58	251.72	Collect	

COPY

DEPOSITED IN MAIL BOX	ARRIVAL NOTICE SENT BY U. S. MAIL
DATE	ADDRESS
TIME	
BY WHOM	

SIGNATURE
CONSIGNEE
DATE OF DELIVERY 193
TIME

712—SEABOARD AIR LINE RAILWAY—712

19

46

Received from
L. R. Powell, Jr., and F. W. Smith, Receivers
Seaboard Air Line Railway
In Good Condition the Articles Described Below:

712—SEABOARD AIR LINE RAILWAY—712

L. R. Powell, Jr., and F. W. Smith, Receivers

Form 2377

DELIVERY RECEIPT

STOP THIS CAR AT | FOR | Weight in Tons: Gross | Net

Freight Bill No. 4563
Freight Bill Date 10/21/33

CAR INITIALS AND NUMBER: **SAL 99454**

C. L. Transferred to or L.C.L. Loading No.

DATE: **10/19/33**

WAYBILL No.: **L 3570**

TO STATION STATE: **Sarasota, Fla.**

VIA STATION STATE: **Conrock Brooksville, Fla.**

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing.)

Shipper's Routing

Agent's Routing

SAL

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill or Previous Waybill Reference and Routing When Rebilled.)

Florida Crushed Stone Co

CONSIGNEE, ADDRESS (Final Destination and Additional Routing)

Joseph A Tintari

Length of Car Ordered	Length of Car Furnished	Marked Capacity of Car *Ordered	Marked Capacity of Car Furnished	Stenciled Weight of Car

WT. CHT.

AT
GROSS
TARE
ALLOWANCE
NET

INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

This Waybill shall be used for All Single Consignments, whether Carload or Less Carload or Interline

(1st) Transfer or Authority for Diversion	(2nd) Transfer or Authority for Diversion	(3rd) Transfer or Authority for Diversion	(4th) Transfer or Authority for Diversion

Indicate by symbol in column provided how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct

DESCRIPTION OF ARTICLES AND MARKS	Commodity, No.	*	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
Crushed Stone			**114500**	**110**	**62.97 Collect**		

COPY

DEPOSITED IN MAIL BOX	ARRIVAL NOTICE SENT BY U. S. MAIL
DATE	ADDRESS
TIME	
BY WHOM	

SIGNATURE
DATE OF DELIVERY 193 CONSIGNEE
TIME 20

712—SEABOARD AIR LINE RAILWAY—712

17

Received from
L. R. Powell Jr. and E. W. Smith, Receivers
Seaboard Air Line Railway
In Good Order, Except as Noted Below:

712—SEABOARD AIR LINE RAILWAY—712

L. R. Powell, Jr., and E. W. Smith, Receivers

Form 2277

DELIVERY RECEIPT

STOP THIS CAR AT ____ FOR

Weight to Date — Gross ____ Net ____

Freight Bill No. 4564
Freight Bill Date 10/21/33

CAR INITIALS AND NUMBER: SAL 96104

C. L. Transferred to or L. C. L. Loading No.: -

DATE: 10/19/33

WAYBILL No.: L 3569

TO STATION: Sarasota, Florida

STATE:

FROM STATION: Conrock

STATE:

NO. ( ) Brooksville, Fla.

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing.)

Shipper's Routing

Agent's Routing

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled.)

Florida Crushed Stone Co.

CONSIGNEE, ADDRESS (Final Destination and Additional Routing)

Joseph A Tintari

Length of Car Ordered	Length of Car Furnished	*Marked Capacity of Car Ordered	*Marked Capacity of Car Furnished	Stenciled Weight of Car

WEIGHED

AT ____

GROSS ____

TARE ____

ALLOWANCE ____

NET ____

INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

This Waybill shall be used for All Single Consignments, whether Carload or Less Carload or Other Local or Interline

(1st) Transfer or Authority for Diversion

(2nd) Transfer or Authority for Diversion

(3rd) Transfer or Authority for Diversion

(4th) Transfer or Authority for Diversion

Indicate by symbol in column provided how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	Commodity No.	*	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
Crushed Stone			113200	1.10	62.26	Collect	

COPY

DEPOSITED IN MAIL BOX	ARRIVAL NOTICE SENT BY U. S. MAIL
DATE	ADDRESS
TIME	
BY WHOM	

SIGNATURE

DATE OF DELIVERY ____ 193 CONSIGNEE

TIME

21

712—SEABOARD AIR LINE RAILWAY—712

18

4 - - - -32

DELIVERY RECEIPT

RECEIVED FROM SEABOARD AIR LINE RAILWAY, IN GOOD CONDITION THE ARTICLES DESCRIBED BELOW

(MAKE CHECK PAYABLE TO L. R. Powell, Jr. and E.W. Smith, Receivers, SEABOARD AIR LINE RAILWAY)

CONSIGNEE Joseph A Tintari

FREIGHT BILL NO. 5242

ROUTE SAL (POINT OF ORIGIN TO DESTINATION)

FREIGHT BILL DATE Nov 7 1933 193

WAYBILLED FROM	WAYBILL DATE AND NUMBER	FULL NAME OF SHIPPER	CAR INITIAL AND NUMBER
Conrock Fla' B/A Brooksville Fla	3882 Nov 6 1933 Fla Crushed Stone Co		

POINT AND DATE OF SHIPMENT — CONNECTING LINE REFERENCE — PREVIOUS WAYBILL REFERENCE — ORIGINAL CAR INITIAL AND NUMBER

WEIGHED AT — GROSS — TARE SAL 96491 — NET

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
Crushed stone SL&C	11300	110	62.15	Collect.	

Thank You. Your Business is Appreciated

ARRIVAL NOTICE SENT BY U. S. MAIL

ADDRESS

SIGNATURE CONSIGNEE

DATE OF DELIVERY 193

TIME

DELIVERY RECEIPT

FORM 7-A

RECEIVED FROM SEABOARD AIR LINE RAILWAY, IN GOOD CONDITION THE ARTICLES DESCRIBED BELOW:

(MAKE CHECK PAYABLE TO L. R. Powell, Jr. and E. W. Smith, Receivers, SEABOARD AIR LINE RAILWAY)

CONSIGNEE Joseph A Tintari

FREIGHT BILL NO. 5243

ROUTE SAL (POINT OF ORIGIN TO DESTINATION)

FREIGHT BILL DATE Nov 7 1933 193

WAYBILLED FROM	WAYBILL DATE AND NUMBER	FULL NAME OF SHIPPER	CAR INITIAL AND NUMBER
Conrock Fla B.A	Brooksville Fla	L 3881 Nov 6 1933 Fla	Crushed stone.

POINT AND DATE OF SHIPMENT — CONNECTING LINE REFERENCE — PREVIOUS WAYBILL REFERENCE — ORIGINAL CAR INITIAL AND NUMBER

WEIGHED AT — GROSS — TARE SAL 98858 — NET

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
Car Crushed stone SL&C	109600	110	60.28	Collect.	

Thank You. Your Business is Appreciated

ARRIVAL NOTICE SENT BY U. S. MAIL

ADDRESS

SIGNATURE CONSIGNEE

DATE OF DELIVERY 193

TIME

22

19

DELIVERY RECEIPT

FORM 7-A

RECEIVED FROM SEABOARD AIR LINE RAILWAY IN GOOD CONDITION THE ARTICLES DESCRIBED BELOW:

(MAKE CHECK PAYABLE TO L. R. Powell, Jr. and E. W. Smith, Receivers, SEABOARD AIR LINE RAILWAY)

CONSIGNEE Joseph A Tintari

FREIGHT BILL NO. 5244

ROUTE SAL (POINT OF ORIGIN TO DESTINATION)

FREIGHT BILL DATE Nov 7 1925 192

WAYBILLED FROM	WAYBILL DATE AND NUMBER	FULL NAME OF SHIPPER	CAR INITIAL AND NUMBER
Conrock Fla B/A Brooksville Fla	L 2880 Nov 6 1925	Fla Crushed Stone Co	SAL 97210

POINT AND DATE OF SHIPMENT | CONNECTING LINE REFERENCE | PREVIOUS WAYBILL REFERENCE | ORIGINAL CAR INITIAL AND NUMBER

WEIGHED AT | GROSS | TARE | NET

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
Car Crushed Stone SAL Thank You - Your Business is Appreciated	118400	110	62.37	Collect.	

ARRIVAL NOTICE SENT BY U. S. MAIL

ADDRESS

SIGNATURE CONSIGNEE

DATE OF DELIVERY 192

TIME

425M-11 32

DELIVERY RECEIPT

FORM 7-A

RECEIVED FROM SEABOARD AIR LINE RAILWAY, IN GOOD CONDITION THE ARTICLES DESCRIBED BELOW:

(MAKE CHECK PAYABLE TO L. R. Powell, Jr. and E. W. Smith, Receivers, SEABOARD AIR LINE RAILWAY)

CONSIGNEE Joseph A. Tintari

FREIGHT BILL NO. 5534

ROUTE SAL (POINT OF ORIGIN TO DESTINATION)

FREIGHT BILL DATE Nov 10 1925 192

WAYBILLED FROM	WAYBILL DATE AND NUMBER	FULL NAME OF SHIPPER	CAR INITIAL AND NUMBER
Zemo Fla 18190	Nov 9 1925	Fla Portland Cement co	SAL 12400

POINT AND DATE OF SHIPMENT | CONNECTING LINE REFERENCE | PREVIOUS WAYBILL REFERENCE | ORIGINAL CAR INITIAL AND NUMBER

WEIGHED AT | GROSS | TARE | NET

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
800 SX Cement Thank You - Your Business is Appreciated	76000	115	87.40	Collect.	

ARRIVAL NOTICE SENT BY U. S. MAIL

ADDRESS

SIGNATURE CONSIGNEE

DATE OF DELIVERY 192

TIME

23

20

[fol. 24] IN UNITED STATES DISTRICT COURT

DEMURRER—Filed March 20, 1936

Now comes Standard Accident Insurance Company, defendant herein, by its undersigned counsel and demurs to the Declaration heretofore filed herein and as grounds for such demurrer, says:

1. That said Declaration does not state a cause of action.

2. That the Declaration shows on its face that the sums claimed therein were not for labor and material furnished Joseph A. Tintari in the prosecution of the work.

3. That the items claimed are not within the language of the bond sued upon.

4. That freight is not within the meaning of the words "labor and materials," as set forth in the Act of Congress and in the terms of the bond.

Wylie & Warren, by Stuart B. Warren, Attorneys for Defendant.

STATE OF FLORIDA,
County of Pinellas, ss:

On the 19th day of March, A. D. 1936, before me the undersigned authority, personally appeared Stuart B. Warren, of counsel for the above named defendant in the foregoing cause, who, being first duly sworn, says that the [fol. 25] foregoing Demurrer is not interposed for delay but in good faith.

Stuart B. Warren.

Sworn to and subscribed before me this 19th day of March, A. D. 1936. Mary E. Garland, Notary Public. Notary Public, State of Florida at Large. My Commission expires Nov. 3, 1937. (Notarial Seal affixed.)

I, Stuart B. Warren, of counsel for the above named defendant, do hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

Stuart B. Warren.

IN UNITED STATES DISTRICT COURT

JUDGMENT—January 8, 1937

This cause coming on to be heard upon the demurrer of defendant, Standard Accident Insurance Company, a corporation, to the declaration of the plaintiff, United States of America, for the use and benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, a corporation, and same having been argued by counsel, it is

Ordered, Adjudged and Decreed that said demurrer be and the same is hereby overruled.

Counsel for defendant having declared in open Court that defendant does not desire to plead further in this cause, and although denying legal liability therefore, defendant's [fol. 26] attorney stipulated in open Court that the claim of the plaintiff as set forth in the declaration is the true and correct amount of charges for freight against Joseph A. Tintari, and counsel for said defendant having in open Court dispensed with further proof of said claim, it is thereupon, upon consideration thereof,

Ordered, Adjudged and Decreed that the plaintiff, United States of America, for the use and benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, a corporation, do have and obtain its judgment against the defendant, Standard Accident Insurance Company, a corporation organized and existing under the laws of the State of Michigan, of Detroit, Michigan, and do have and recover of and from said defendant the sum of $408.14, as principal, and the further sum of $103.19, as interest, together with its costs incurred in this action, which are here and now taxed in the sum of $17.94, for which let execution issue.

Done and Ordered this 8th day of January, 1937.

Alexander Akerman, Judge of the aforesaid Court.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed January 8, 1937

Now comes Standard Accident Insurance Company, a corporation organized and existing under the laws of the

State of Michigan, of Detroit, Michigan, the defendant in the Trial Court and plaintiff in error, and for its complete [fol. 27] assignments of errors upon which it relies for a reversal of this cause in the Circuit Court of Appeals, in this connection says that in the record proceedings and final judgment aforesaid, manifest error hath happened and intervened to the prejudice of this defendant and plaintiff in error, to-wit:

1. The Court erred in overruling the defendant's Demurrer to the Declaration.

2. The Court erred in entering up Final Judgment against the defendant.

Wherefore, Standard Accident Insurance Company, defendant in said cause, prays that the Judgment may be reversed.

George W. Wylie, Stuart B. Warren, Attorneys for Standard Accident Insurance Company.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed January 8, 1937

To the Honorable Alexander Akerman, Judge Presiding in said Court:

Comes now the defendant in the above styled cause, Standard Accident Insurance Company, a Corporation organized and existing under the laws of the State of Michigan, of Detroit, Michigan, by its undersigned attorneys, and feeling itself aggrieved by the Final Judgment of this Honorable Court entered against it in favor of the said United States of America, for the use and benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, a corporation, [fol. 28] on the 8th day of January, A. D. 1937, hereby prays that an Appeal may be allowed from the United States Circuit Court of Appeals for the Fifth Circuit, to the District Court of the United States for the Southern District of Florida, and be made returnable according to law and the practice of this Court. And the said petitioner

respectfully presents herewith its Assignment of Errors and prayer for reversal.

George W. Wylie, Stuart B. Warren, Attorneys for Standard Accident Insurance Company.

IN UNITED STATES DISTRICT COURT

PRAYER FOR REVERSAL—Filed January 8, 1937

To the Honorable United States Circuit Court of Appeals for the Fifth Circuit:

Comes now the Standard Accident Insurance Company, a corporation organized and existing under the laws of the State of Michigan, of Detroit, Michigan, plaintiff in error, defendant from the Court below and prays for a reversal of the judgment of the District Court of the United States for the Southern District of Florida, in a certain matter therein pending, being a common law action for damages in which United States of America, for the use and benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, a corporation, is plaintiff, and Standard Accident Insurance Company, a corporation organized and existing under the laws of the State of Michigan, of Detroit, Michigan, is de-
[fol. 29] fendant, which judgment was entered on the 8th day of January, A. D. 1937, in said District Court.

George W. Wylie, Stuart B. Warren, Attorneys for Standard Accident Insurance Company.

The foregoing Prayer for Reversal was presented and filed before me this the 8th day of January, A. D. 1937.

Alexander Akerman, United States District Judge.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—January 8, 1937

This 8th day of January, A. D. 1937, came the defendant, Standard Accident Insurance Company, a corporation organized and existing under the laws of the State of Michigan, of Detroit, Michigan, and filed herein and presented

to the Court its petition, praying for the allowance of Appeal and Assignments of Error to be urged by it, praying also that a transcript of the record and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Judicial Circuit and that such other and further proceedings may be had as may be proper in the premises.

In consideration whereof, the Court does allow the Appeal upon the defendant's giving bond according to law in the sum of One Thousand ($1,000.00) Dollars, which shall operate as a supersedeas bond.

Alexander Akerman, United States District Judge.

[fol. 30] Supersedeas bond on appeal, approved and filed January 8, 1937, omitted in printing.

[fol. 31] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 8, 1937

To the Clerk of the above entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Fifth Judicial Circuit, under the appeal heretofore allowed by said Court and include in the said transcript the following pleadings, proceedings and papers on file, to-wit:

Declaration.
Demurrer of Defendant.
Final Judgment.
[fol. 32] Assignments of Error.
Petition for Appeal.
Prayer for Reversal.
Order Allowing Appeal.
Citation and Proof of Service.
Supersedeas Bond.
Præcipe for Transcript.
Clerk's Certificate to Transcript.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

George W. Wylie, Stuart B. Warren, Attorneys for the Defendant.

We, the undersigned attorneys for the plaintiff, agree that the records, documents, papers and proceedings set forth in the foregoing Præcipe for Transcript are sufficient for a complete record in this cause on appeal, and we hereby adopt the foregoing as a list designated by each of the parties to this cause to complete said transcript.

We hereby accept service of copy of foregoing Præcipe for Transcript and agree that said Præcipe shall be obeyed by and acted upon by the Clerk without further delay.

A. G. Turner, Attorneys for Plaintiff.

[fol. 33] Clerk's certificate to foregoing transcript omitted in printing.

(Original Citation omitted from the record, the original thereof being on file in the office of the Clerk of the United States Circuit Court of Appeals.)

* * * * * * *

[fol. 34] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of March 15th, 1937

No. 8327

STANDARD ACCIDENT INSURANCE COMPANY

versus

UNITED STATES OF AMERICA for the Use and Benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company

On this day this cause was called, and, after argument by Stuart B. Warren, Esq., for appellant, and Jno. Bell, Esq., for appellees, was submitted to the Court.

[fol. 35] OPINION OF THE COURT—Filed April 14, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8327

STANDARD ACCIDENT INSURANCE COMPANY, Appellant,

versus

UNITED STATES OF AMERICA for the Use and Benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Airline Railway Company, Appellees

Appeal from the District Court of the United States for the Southern District of Florida

(April 14, 1937)

Before Foster, Hutcheson and Holmes, Circuit Judges.

HUTCHESON, Circuit Judge:

Appellant is surety on a postoffice construction bond given pursuant to Sec. 270, Title 40 U. S. C. A.[1] Appellee

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Note 1. Repealed by Act of August 24, 1935, 49 Stat. 794 but with a saving clause as to existing contracts and bonds.

[fol. 36] is a carrier, which having transported materials used in the work, sued upon the bond for its unpaid freight bills. Appellant's demurrer, that a railroad company as to freight charges, is not, within the meaning of the bond, "a corporation who has furnished labor or materials used in the construction or repair of any public building or public work" was overruled, and the facts being admitted, judgment went for plaintiff.

Appellant insists that except for our decision in City of Stuart vs. American Surety Co., 38 Fed. (2d) 193, both reason and authority support its claim that the carrier furnished neither labor nor materials to the work. It urges us to reexamine that case, and either disapprove its holding or confine its effect to a bond worded literally and precisely as that one was. It urges upon us, in short, a return to our earlier decision, United States vs. Hyatt, 92 Fed. 442, which the Stuart case, though not expressly, has impliedly overruled.

In support of this urging it invokes dictionary definitions, and relies upon what it assumes to be the intent and reason of the law. Its argument brings forward all the reasons advanced, in the cases it relies on, for a strict construction of the bond, and a denial to common carriers of its protection. These reasons, particularly the existence of the carrier's lien and the indirectness of its claim of furnishing, were all examined and rejected in the City of Stuart case, and the cases cited in it, and in later decided cases affirming and approving it.

It will serve no purpose for us to thresh again this old straw. It is sufficient for us to say that we disapprove the ruling and teaching of the Hyatt case. We approve that in City of Stuart.

In addition to the cases it cites, attention may be called to the following cases, either citing it with approval or announcing adherence to the same principle, a broad and [fol. 37] liberal construction of the statute and bond. United States vs. Hercules Co., 53 Fed. (2d) 451; United States vs. James Baird Co., 73 Fed. (2d) 652; Equitable Casualty Co. vs. Helena Grocery Co., 60 Fed. (2d) 380; Holloway & Dupont Dredging Co. vs. Des-Rocher, 57 Fed. (2d) 864; American Surety Co. of New York vs. United States, 76 Fed. (2d) 67; Republic Nat. Bank & Trust Co. vs. Massachusetts Bonding & Ins. Co., 68 Fed. (2d), 445; Levy vs. United States Fidelity & Guaranty Co. 68 Fed.

(2d) 329; Massachusetts Bonding Co. vs. United States, for the use of Clarksdale, — Fed. (2d) —.

Affirmed.

[fol. 38] JUDGMENT

Extract from the Minutes of April 14th, 1937

No. 8327

STANDARD ACCIDENT INSURANCE COMPANY

versus

UNITED STATES OF AMERICA for the Use and Benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Standard Accident Insurance Company, and the surety on the appeal bond herein, American Surety Company of New York, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 39] MOTION AND ORDER STAYING MANDATE—Filed April 27th, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8327

STANDARD ACCIDENT INSURANCE COMPANY, Appellant,

versus

UNITED STATES OF AMERICA, for the Use and Benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, Appellees

Motion for Stay of Mandate

Comes now the Standard Accident Insurance Company, Appellant in the above entitled cause, and respectfully moves

this Honorable Court to stay the mandate in the above entitled cause and not permit the same to be issued out of said action until the further order of the Court, on the ground and for the reason that the Appellant expects and intends, in good faith, within the time allowed by law, to apply to the Supreme Court of the United States, by petition for review on writ of certiorari, the decision and judgment rendered in favor of Appellee and against Appellant in the above entitled action.

Appellant further shows unto the Court that there has already been filed in the cause a supersedeas bond in the Court below and that it is ready, able and willing to make any further good and sufficient bond, conditioned as provided by law that this Court may require.

Wherefore, Appellant moves the Court that it make and [fol. 40] enter a proper order herein staying the issuance of the mandate in the above entitled cause until the further order of the Court.

(Signed) Geo. W. Wylie, Stuart B. Warren, Attorneys for Appellant.

STATE OF FLORIDA,
County of Hillsborough, ss:

We, Knight, Thompson & Turner, Attorneys for Appellee in the above entitled cause, hereby acknowledge receipt of copy of the above Motion and enter our consent to the entry of an Order, as prayed for in said Motion.

Knight, Thompson & Turner, by (Signed) Jno. R. Bell, Attorneys for Appellee.

[fol. 41] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 8327

STANDARD ACCIDENT INSURANCE COMPANY, Appellant,

versus

UNITED STATES OF AMERICA for the Use and Benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, Appellees

On Consideration of the Application of the appellant in the above numbered and entitled cause for a stay of the

mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 27th day of April, 1937.

(Signed) Joseph C. Hutcheson, Jr., United States Circuit Judge.

[fol. 42] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 34 to 41 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8327, wherein Standard Accident Insurance Company is appellant, and United States of America, for the use and benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers of the Seaboard Air Line Railway Company, are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 33 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 27th day of April, A. D. 1937.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

Endorsed on cover: File No. 41,498. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 41. Standard Accident Insurance Company, petitioner, vs. The United States of America, for the use and benefit of L. R. Powell, Jr., and Henry W. Anderson, as Receivers, etc. Petition for a writ of certiorari and exhibit thereto. Filed May 7, 1937. Term No. 41, O. T., 1937.